

## § 1427.1087

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1427.1082, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination of whether to approve the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Farm Service Agency (hereinafter referred to as "FSA"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the FSA regulations governing appeals, 7 CFR part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1427.1082(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985]

### § 1427.1087 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and condi-

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tions of these regulations at the time of renewal of their contract.

[44 FR 67085, Nov. 23, 1979, as amended at 44 FR 74797, Dec. 18, 1979]

### § 1427.1088 Contract fees.

(a) Each warehouseman who has a non-federally licensed cotton warehouse must pay an annual contract fee for each such warehouse for which the warehouseman requests renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement as follows:

(1) A warehouseman who has an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under such agreement in advance of the renewal date of such agreement.

(2) A warehouseman who does not have an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral but who desires such an agreement must pay a contract fee for each warehouse for which CCC approval is sought prior to the time that the agreement is approved by CCC.

(b) The amount of the contract fee shall be determined and announced annually in the FEDERAL REGISTER.

[Amdt. 4, 50 FR 36569, Sept. 9, 1985]

### § 1427.1089 OMB Control Numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR part 1427) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0040, 0560-0074, 0560-0027, and 0560-0059.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985. Redesignated by Amdt. 4, 50 FR 36569, Sept. 9, 1985]

## PART 1430—DAIRY PRODUCTS

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AUTHORITY: 7 U.S.C. 7251 and 7252; and 15 U.S.C. 714b and 714c.

### Subpart A—Price Support Program for Milk

SOURCE: 61 FR 37615, July 18, 1996, unless otherwise noted.

#### § 1430.1 Definitions.

For purposes of this subpart, unless the context indicates otherwise, the following definitions shall apply:

*AMS* means the Agricultural Marketing Service, USDA.

*CCC* means the Commodity Credit Corporation, USDA.

*FSA* means the Farm Service Agency, USDA.

*Manufacturing allowance* means:

(1) For milk used to produce butter and nonfat dry milk, the amount by which the product price value of butter and nonfat dry milk manufactured from 100 pounds of milk containing 3.5 pounds of butterfat and 8.7 pounds of nonfat milk solids resulting from a State's yields and product price formulas exceeds the State's class price for the milk used to produce those products; or

(2) For milk used to produce cheese, the amount by which the product price value of cheese manufactured from 100 pounds of milk containing 3.5 pounds of butterfat and 8.7 pounds of nonfat milk solids resulting from a State's yields and product price formulas exceeds the State's class price for the milk used to produce cheese.

*Plant* means the physical assets of an individual, partnership, association, corporation, cooperative, or other business enterprise used in the production of dairy products.

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*USDA* means the United States Department of Agriculture.

### § 1430.2 Price support levels and purchase conditions.

(a)(1) The levels of price support provided to farmers marketing milk containing 3.67 percent milkfat from dairy cows are: \$10.35 per hundredweight for calendar year 1996, \$10.20 per hundredweight for calendar year 1997, \$10.05 per hundredweight for calendar year 1998, and \$9.90 per hundredweight for calendar year 1999.

(2) Subject to paragraph (b), price support for milk will be made available through CCC purchases of butter, nonfat dry milk, and Cheddar cheese, offered subject to the terms and conditions of FSA's purchase announcements.

(3) CCC purchase prices for dairy products will be announced by USDA news release.

(4) CCC may, by special announcement, offer to purchase other dairy products to support the price of milk.

(5) Purchase announcements setting forth terms and conditions of purchase may be obtained upon request from the United States Department of Agriculture, Farm Service Agency, Procurement and Donations Division, Stop 0552, 1400 Independence Ave. SW., Washington, DC 20250-0552, or the United States Department of Agriculture, Farm Service Agency, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205.

(b)(1) The block cheese purchased shall be U.S. Grade A or higher, except that the moisture content shall not exceed 38.5 percent; the barrel cheese shall be U.S. Extra Grade, except that the moisture content shall not exceed 36.5 percent.

(2) The nonfat dry milk purchased shall be U.S. Extra Grade, except that the moisture content shall not exceed 3.5 percent.

(3) The butter purchased shall be U.S. Grade A or higher.

(c) The products purchased shall be manufactured in the United States from milk produced in the United States and shall not have been previously owned by CCC.

(d) Purchases will be made in carlot weights specified in the announce-

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ments. Grade and weights shall be evidenced by USDA issued inspection certificates.

### § 1430.3 Ineligibility for purchase of products produced in States with excessive manufacturing allowances.

(a) For the period beginning May 1, 1996, and ending December 31, 1999, no product produced in a plant in a State under State milk pricing regulation will be eligible for sale to the CCC under § 1430.2 of this subpart, if the State, as determined by the Director, Dairy Division, AMS, provides in formulas establishing prices that handlers must pay for milk, a manufacturing allowance that exceeds either:

(1) \$1.65 per hundredweight of milk for milk manufactured into butter and nonfat dry milk; and

(2) \$1.80 per hundredweight of milk for milk manufactured into cheese.

(b) Prior to a final determination that a State has in effect a manufacturing allowance that exceeds the manufacturing allowances provided in (a) of this section, the State shall be provided the opportunity to present information at a hearing before the Director, Dairy Division, AMS. The Director shall establish the procedures for such hearing.

(c) Reconsideration and review of the determinations made under (b) of this section may be sought by petition to the Deputy Administrator, Marketing Programs, AMS under procedures established by the Deputy Administrator.

### Subpart B—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1991 to December 31, 1997

AUTHORITY: 7 U.S.C. 1446e.

SOURCE: 56 FR 4527, Feb. 5, 1991, unless otherwise noted.

#### § 1430.340 General statement.

(a) *Purpose.* This subpart implements the provisions of section 204 of the Agricultural Act of 1949 as amended and affected by section 1105(g)(3) of the Omnibus Budget Reconciliation Act of 1990

and sections 1105(a)(4) and 1105(c) of the Omnibus Budget Reconciliation Act of 1993, under which the Secretary of Agriculture is required to provide for a reduction in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the calendar years 1991 through 1997.

(b) *Amount of the reduction.* (1) The amount of the price reduction shall be 5 cents per hundredweight of milk marketed by producers for commercial use in 1991 and, except as provided by the provisions of paragraph (b)(2) of this section, 11.25 cents per hundredweight of milk marketed by producers for commercial use in the calendar years 1992 through 1995 and 10 cents per hundredweight of milk marketed by producers for commercial use in the calendar years 1996 and 1997.

(2) On or before May 1 of each of the calendar years 1992 through 1997, the amount of reduction per hundredweight for each such year shall be adjusted individually for the remainder of the relevant year to compensate for refunds of price reductions made in the preceding calendar year which were collected by CCC under this subpart. The adjustment shall be announced by the Secretary by the required date.

(3) The reductions provided for in paragraphs (b) (1) and (2) of this section shall be in addition to any other reduction in the price received by producers as may be required under law.

(4) The reductions provided for in paragraphs (b)(1) and (b)(2) of this section shall be made and remitted to the CCC in the manner prescribed in § 1430.343 of these regulations.

(5) In addition, the CCC may make provision for the refund of monies collected in those cases in which the monies were collected for milk marketings later excluded by statutory amendment from coverage of this subpart for any of the calendar years 1992 through 1997.

(c) *Refund.* To the extent provided for in this subpart, a person may recover the entire amount by which prices were, for that producer, reduced under paragraphs (b)(1) or (b)(2) of this section for a year, if, as determined under the provisions in this subpart, the marketings of milk individually by such

person and each of the persons who are *related persons* with respect to that person were not greater than the marketings of milk by those persons for the preceding year.

(d) *Applicability.* The provisions of this subpart shall apply to all milk produced in the United States that is marketed for commercial use by producers during the calendar years beginning on January 1, 1991, and ending December 31, 1997.

[56 FR 4527, Feb. 5, 1991, as amended at 57 FR 30897, July 13, 1992; 58 FR 61001, Nov. 19, 1993]

#### § 1430.341 Definitions.

For purposes of this subpart unless otherwise specified, the following terms shall have the following meaning and shall be applied as if both the singular and plural forms were used:

(a) *AMS* means the Department's Agricultural Marketing Service.

(b) *FSA* means the Department's Farm Service Agency.

(c) *Base period* means the calendar year immediately preceding the calendar year for which a refund is being requested.

(d) *Bovine growth hormone* means a synthetic growth hormone produced through the process of recombinant DNA techniques that is intended for use in bovine animals.

(e) *CCC* means the Commodity Credit Corporation.

(f) *Calendar year* means, for the relevant year, the 12-month period beginning January 1 and ending December 31 of that year.

(g) *County committee* means an FSA county committee established under 16 U.S.C. at 590h.

(h) *Dairy Division* means the Dairy Division of the AMS.

(i) *DASCO* means the Deputy Administrator, State and County Operations, of the FSA.

(j) *Date of FDA BGH approval* means the date the FDA pursuant to authority under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b), first approves an application with respect to the use of BGH.

(k) *Department* means the United States Department of Agriculture.

(l) *FDA* means the Food and Drug Administration.

(m) *Milk marketed for commercial use* shall include all cow's milk which is disposed of in raw or processed form by voluntary or involuntary sale, barter or exchange, or by gift.

(n) *Milk marketing* means milk marketed for commercial use.

(o) *Person* means an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity, and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

(p) *Producer* means any person who produced milk through the milking of cows.

(q) *Producer's Successor* means for purposes of this section only any person who receives or is entitled to receive payment for milk as a producer in those instances in which the producer will otherwise receive no payment for the milk from any source.

(r) *Reduction* means that amount by which the price received for milk marketed for commercial use by producers is reduced, or is required to be reduced, in accordance with the provisions of this subpart.

(s) *Refund* means the money that is or may be returned to a producer under this subpart by CCC for price reductions made under this subpart.

(t) *Refund period* means the calendar year for which a refund is being requested.

(u) *Responsible person* means:

(1) Any person who pays, or who is contractually or otherwise required to pay, a producer or producer's successor for milk marketed by a producer for commercial use, except to the extent that the producer of the milk is the responsible person under paragraph (u)(2) of this section; Provided, that the responsible persons under this paragraph shall include, but are not limited to, handlers of milk, including a handler regulated under a Federal milk order to the extent of, but not limited to, milk for which payments are transmitted by the handler to a Market Administrator under such an order for transmittal by the Market Administrator to individual producers; and

(2) Any producer with respect to milk of the producer's own production who

markets such milk for commercial use in the form of milk or milk products:

(i) To consumers either directly or through retail or wholesale outlets, or

(ii) To persons located outside of the United States.

(v) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has been delegated or to whom authority may hereafter be delegated to act in his stead.

(w) *State Committee* means an FSA state committee established under 16 U.S.C. at 590h.

(x) United States means, except with respect to paragraphs (k), (v), and (y) of this section, the following:

(1) The District of Columbia, and

(2) All States except for Alaska and Hawaii.

(y) *United States Bank* means a bank organized under the laws of the United States, a state of the United States, or the District of Columbia.

(z) *Vice President, CCC* means the Vice President of CCC, who is also the Administrator of AMS.

[56 FR 4527, Feb. 5, 1991, as amended at 57 FR 30898, July 13, 1992; 58 FR 61001, Nov. 19, 1993]

**§ 1430.342 Responsibility for administration of regulations.**

(a) *Collection.* The AMS and its Dairy Division shall have the responsibility for administering the provisions of this subpart which relate to the collection of the reduction in the price to be received by producers of milk and the remittance of the reduction to the CCC. Administrative subpoenas, as may be determined to be necessary for the administration of this subpart and as permitted by law, may be issued by the Vice President, CCC, or his designee.

(b) *Refund.* DASCO, through the FSA State and county committees, shall have the responsibility for administering the provisions of this subpart which relate to the establishment and determinations of milk marketings during a base period for the purpose of refunds, and all other matters relating to refunds including administrative oversight of payments and the recovery of overpayments.

**§ 1430.343 Required reductions and remittances.**

(a) *Required reductions.* (1) A reduction of five (5) cents per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1991, and ending December 31, 1991.

(2) Except as provided by the provisions of paragraph (a)(5) of this section, a reduction of eleven and twenty-five hundredths (11.25) cents per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1992, and ending December 31, 1995.

(3) Except as provided by the provisions of paragraph (a)(5) of this section, a reduction of ten (10.00) cents per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1996, and ending December 31, 1997.

(4) The reductions specifically provided for in paragraphs (a)(2), (a)(3) and (a)(5) of this section with respect to the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1992, and ending December 31, 1997, shall, as appropriate, be reduced by ten percent during the period beginning on the date of FDA BGH approval and ending 90 days after the date of such approval.

(5) For each of the calendar years 1992 through 1997, the reductions as specifically provided for in paragraphs (a)(2) and (a)(3) of this section, with respect to marketings of milk for commercial use in those respective years, shall be increased on, or before, May 1 of the year for the remainder of the year by an amount per hundredweight of milk that is necessary in order to compensate for refunds made to producers of milk for price reductions collected under this subpart on milk marketed for the immediately preceding calendar year.

(b) *Remittances.* Each responsible person shall remit to the CCC the funds represented by the reductions required by this subpart by the last day of the month following the month in which the milk was marketed. For all milk marketed outside of the United States by producers, the producer shall also remit the funds represented by the reductions to CCC by the last day of the month following the month in which the milk was marketed, unless the person paying the producer for such milk has remitted the funds by that date, in which case the payment shall be considered to have been made by the producer and may be retained by CCC on that basis. Remittances to the CCC shall be made using negotiable instruments payable in United States currency, drawn on a United States bank, and made payable to the *Commodity Credit Corporation* or to the CCC. Remittances and reports required under this subpart shall be mailed to the location designated by the Dairy Division.

(c) *Remittance report.* (1) For each month that a person is a responsible person, such person shall, in addition to remitting the funds for the reduction, file a report as prescribed by the Dairy Division which shall include:

(i) The identity of the responsible person, including such person's business address;

(ii) The month in which the applicable marketings occurred;

(iii) The total pounds of milk to which the remittance applies; and

(iv) Any additional information required by the Dairy Division.

(2) The report required in paragraph (c)(1) of this section shall be submitted by the due date for the remittances required by this subpart.

(d) *Application of Remittances.* Funds received by the CCC pursuant to this subpart shall be applied first to any outstanding penalty, then to late-payment interest and other charges, and then to the principal amount due.

(e) The funds remitted to the CCC under this paragraph shall be considered to be included in the payments made to a producer of milk for purposes of the minimum price provisions of the Agricultural Adjustment Act (7 U.S.C. 601 *et seq.*), as re-enacted and

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amended by the Agricultural Marketing Agreement Act of 1937.

[56 FR 4527, Feb. 5, 1991, as amended at 58 FR 61001, Nov. 19, 1993]

#### **§ 1430.344 Refunds—General provisions for eligibility and other requirements.**

(a) A refund of a reduction in producer proceeds made under this subpart may be made only to the extent explicitly provided for in this subpart. Such refunds may be made only for milk marketed by producers in the calendar years 1991 through 1997. The monies that may be refunded to a person shall include only the reductions in proceeds of that person as provided for in § 1430.343(a) pursuant to provisions of the Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993.

(b) A person may receive a refund only for reductions actually made in that person's producer proceeds for milk and only for those monies actually remitted to CCC.

(c) If other conditions are met, a person may receive a refund of the entire refundable reduction made under this subpart for a calendar year in that person's milk producer proceeds if for that year the marketings of milk for commercial use, individually, of that person and each related person with respect to that person were not greater than their marketings of milk for commercial use in the applicable base period. This calculation will be made separately for the person seeking the refund and each related person.

(d) The person seeking the refund shall be responsible to prove that the refund is due. Such person must present all relevant data needed by the county committee to establish eligibility for the payment or requested by the County Committee for that purpose. That information will include all information needed to make the necessary determinations concerning related persons. The person seeking the refund for all relevant months must present month-by-month marketing data for that person and related persons for the relevant time periods.

(e) If the person seeking the refund was a responsible person for such person's own milk production, then such

person must also provide proof that the required remittances were paid to CCC. If the responsible person was a third party, the person seeking the refund shall be required to certify whether, to the best of such person's knowledge, the reductions to be refunded were remitted to the CCC. If the third party did not make full payment for all marketings of all producers for the relevant period, the refund eligibility of individual producer shall be adjusted in such manner as DASCOT determines to be appropriate taking into consideration the purposes of this subpart.

(f) The burden of proof on all refund matters shall lie with the person seeking to obtain, or retain, a refund from CCC. Such persons may be required to obtain certifications and documentation as needed from third parties to establish eligibility for a refund.

(g) A person may seek a refund as a representative of a producer where such representation arises by reason of the death, disappearance or incompetency of the producer or by other cause as permitted by DASCOT.

(h) No persons may apply for a refund before the end of the year of the reduction to be refunded.

(i) A complete application for a refund with all necessary documentation must be submitted to the county committee by March 15 of the year following the year for which the refund is requested, or if March 15 is not a business day, the next business day thereafter.

(j) If an overpayment of a refund is made, such overpayment shall be repaid to CCC with interest from the date of the overpayment. The repayment shall be due from the person who obtained the overpayment and any person who knowingly participated in a scheme or device to obtain the overpayment. If the overpayment resulted from a failure to comply with the provisions of this subpart, or results from a violation of this subpart, the persons responsible shall, in addition, be liable for a civil penalty to be paid to CCC. The amount of the penalty may be up to the amount equal to the quantity of milk involved in the overpayment multiplied by the support price for milk at the time the reduction in proceeds was

made. These liabilities shall be in addition to any others imposed by law.

(k) All determinations made by county committee with respect to the granting of refunds or collection of overpayments shall be subject to review by DASCOS, as deemed needed by DASCOS to assure uniformity of treatment and to assure that there is full compliance with the provisions of this subpart.

[56 FR 4527, Feb. 5, 1991, as amended at 58 FR 61002, Nov. 19, 1993]

**§ 1430.345 Determination of marketings for refund purposes; Related persons; Refunds for years in which the person whose proceeds were reduced leaves the dairy business.**

(a) For purposes of calculating refund eligibility under this subpart, the marketings of a person for commercial use shall include all such marketings for the relevant period in which such person had an interest.

(b) As determined appropriate by DASCOS to accomplish the goals of the program, the county committee may also consider marketings of milk occurring in the base period or in the reduction year of any operation with respect to which the person had an interest in the herd, the dairy animals, or in the facilities involved in the production at any time during the base period or reduction year.

(c) DASCOS may consider a person to be in compliance with the requirements for the refund despite a failure to comply with conditions otherwise required by this subpart if such relief is deemed to be needed to afford fair and equitable treatment and the granting of such relief will not impair the accomplishment of the goals of the program.

(d)(1) Persons considered to be a related person with another person for purposes of calculating refund eligibility shall be as follows:

(i) The spouse and minor child of such person and/or guardian of such child;

(ii) Any corporation in which the person is a stockholder, shareholder, or owner of equal to, or greater than, a 10 percent interest in such corporation;

(iii) Any partnership, joint venture, or other enterprise in which the person has an ownership interest or financial interest; and

(iv) Any trust in which the person seeking the refund or any person listed paragraphs (d)(1) (i) through (iii) of this section is a beneficiary or has a financial interest.

(2) If the person seeking a refund is a corporation, partnership, or other entity, the related persons shall be considered to be:

(i) Any participant, owner, or stockholder in the entity except, in the case of corporations only, persons with less than a 10 percent share in the corporation shall not be considered a related person with respect to that corporation; and

(ii) As determined under the provisions of paragraph (d)(1) of this section, any person who is a related person with respect to the persons identified as a related person to an entity under (d)(2)(i) of this section.

**§ 1430.346 Transfer of milk marketing history for purposes of establishing eligibility for a refund.**

(a) If a producer has acquired the complete dairy operation (i.e., all land, all equipment and all dairy cattle at all locations) of a family member, the milk marketing history of the acquiring producer may be increased by the milk marketing history of the family member. The preceding sentence shall apply only if the transferor no longer has any interest in any dairy, dairy herd, or in any dairy production. No other transfer of a milk marketing history shall be permitted.

(b) A request for a transfer of the milk marketing history must be made to the county committee of the county where the acquiring producer's dairy farm is located. A transfer may be approved only if adequate records are presented to establish eligibility for the transfer.

(c) For purposes of this section:

(1) A *family member* of the transferee of the dairy operation shall include all of the following:

(i) The parent, grandparent, or legal guardian of the transferee;

(ii) The spouse of a parent or grandparent of the transferee;



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- (iii) The transferee's spouse;
- (iv) The son, daughter, grandson or granddaughter of the transferee, or the spouse of any such persons;
- (v) Siblings of the transferee and the spouses of such siblings.

(2) *Milk marketing history* means the milk marketings by the transferor of the dairy operations in the year preceding the year of the transfer of the complete dairy operation which could have been used by the transferor to claim a refund of a reduction in producer proceeds made under this subpart.

(d) Notwithstanding any other provisions of this subpart, if a milk marketing history is transferred:

(1) The transferor shall not be eligible for a refund of a reduction in producer proceeds made in the year of the transfer.

(2) The marketing of milk in the year of the transfer which could be attributed to the transferor shall be considered solely to be marketings by the transferee for calculations relating to refunds of reductions made in the transfer year or in the following year; and

(3) The transferee, to the extent that other conditions are met, may claim refunds of reduction made in the proceeds of the transferor for the transfer year.

(e) A transfer of milk marketing history under this section shall become null and void if the transferor returns to dairying at any time prior to the payment of a refund to the transferee which took into account the transferor's marketings of milk.

**§ 1430.347 Availability of records and facilities.**

(a) *Records to be maintained.* Each responsible person and person seeking a refund shall maintain records in a manner that will demonstrate compliance with the provisions of this subpart and/or eligibility for a refund.

(b) *Availability of records and facilities.* Each responsible person or other persons affected by the provisions of this subpart shall make available to authorized representatives of the CCC or the Department all records and facilities pertaining to such person's operations that are necessary to determine

compliance with the provisions of this subpart.

(c) *Retention of records.* All records required under this subpart shall be retained by the person required to keep such records for a period of three years beginning at the end of the calendar year to which such records pertain, or for such longer period as the Dairy Division or the CCC may require by notice to such person.

**§ 1430.348 Adjustment of accounts.**

Except as otherwise provided in this section, whenever the responsible person or person obtaining a refund becomes aware through an audit or other means that an error in payment or refund has been made, such person must immediately notify the CCC of the error and make any payment to the CCC that is due the CCC, together with any late-payment interest and other charges as are provided for in this subpart. If the error is otherwise unknown to the person involved until notice is given by the CCC, the underpayment plus late-payment interest and other charges provided for in this subpart shall be made by the next date for remitting reductions as provided in § 1430.343 or within the time specified by the CCC if no subsequent remittances are required by this subpart from such person. Overpayments to the CCC by a responsible person shall be credited to the account of the responsible person remitting the overpayment and shall be applied against amount otherwise due to the CCC from the responsible person or refunded if no amounts are due to the CCC from such person. Nothing in this section shall reduce the liability of a person to the CCC for late-payment interest and other charges for underpayment or nonpayment to the CCC.

**§ 1430.349 Charges and penalties.**

(a) *Charge for dishonored negotiable instruments.* Each person who issues a negotiable instrument to the CCC in connection with this subpart that is not honored because of insufficient funds or any other reason will be charged \$25 plus such additional costs as may apply. The amount of this charge shall be in addition to any and all other authorized charges and penalties.

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(b) *Late-Payment Interest.* Any unpaid obligation due the CCC under this subpart shall be increased by late-payment interest. Such interest shall be assessed in accordance with the provisions of 7 CFR part 1403 or successor regulations so designated by the Department. The timeliness of payment to the CCC shall be determined based on the applicable postmark date or the date of receipt by the CCC if no postmark date is available or legible.

(c) *Penalties.* (1) In addition to other penalties provided for in this subpart, a civil penalty payable to the CCC shall be due from any responsible person who fails to make a reduction in the price of milk as required in this subpart and from any person who fails to remit to the CCC the funds required to be collected and remitted by this subpart, or fails to comply with any other requirement or provision of this subpart. Such penalty shall be in addition to any other amount due CCC and in addition to any other liability imposed by law. The amount of the penalty shall be up to an amount which is equal to the support price for milk in effect at the time the failure occurs multiplied by the quantity of milk involved. The Vice President, CCC, or a designee, may assess a penalty at less than the maximum amount where it is determined equitable in those cases where the failure was unintentional and such relief can be granted without harm to the program.

(2) The Vice President, CCC, or a designee, shall notify any person against whom a penalty is to be assessed of the intention to assess such penalty and provide such person with an opportunity for an administrative hearing.

### § 1430.350 Limitation of authority.

(a) State and county committees or their designees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) A State committee may take any action authorized or required by the regulations in this subpart to be taken by a county committee when such action has not been taken by the county committee. A State committee may also:

(1) Correct, or require a county committee to correct, any action taken by

such county committee which is not in accordance with the regulations in this subpart, or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or county committee shall preclude DASCOS, or a designee, from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee.

### § 1430.351 Estates and trusts; minors.

(a) For purposes of this subpart, a receiver of an insolvent debtor's estate and the trustee of a trust estate may, for the purpose of this subpart, be considered to represent an insolvent producer and the beneficiaries of a trust, respectively, and the production of the receiver or trustee shall be considered to be production of the producer which such receiver or trustee represents. Program documents executed by the receiver or trustee will be accepted only if they are legally authorized and valid and such person has the authority to execute the applicable documents.

(b) A person seeking a refund under the provisions of this part who is a minor shall be eligible for a refund under the regulations in this subpart only if:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are signed by the guardian; or

(3) As determined by DASCOS, an acceptable bond is furnished by an acceptable surety which protects CCC against any loss as may result to CCC in connection with the minor and the administration of this subpart.

### § 1430.352 Appeals.

Except as otherwise provided in this subpart with respect to matters under the supervision of AMS, the appeal regulations in 7 CFR part 780 shall be applicable to appeals of determinations made under this subpart.

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### **§ 1430.353 Over-disbursement.**

If a refund is disbursed under this subpart which exceeds the amount allowed in this subpart, the person receiving payment and that person's successors shall be personally liable for repayment of the amount of such excess payment plus interest computed in accordance with 7 CFR part 1403, if applicable, or in the amount allowed by law if part 1403 does not apply.

### **§ 1430.354 Death, incompetency, or disappearance.**

In the case of the death, incompetency, or disappearance of any person who is entitled to a refund, such refund may be made to the person or persons who are specified in 7 CFR part 707. The person requesting such refund shall file Form ASCS-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent" as provided in that part or meet such other requirements as may be imposed in successor regulations so designated by the Department.

### **§ 1430.355 Assignment.**

Any person who may be entitled to a refund may assign his rights to such refund in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

### **§ 1430.356 Instructions and forms.**

Such forms and instructions as are necessary for establishing milk marketings during the base period and obtaining refunds pursuant to the provisions in this subpart may be obtained from the county FSA office.

### **§ 1430.357 Scheme or device.**

(a) Any person who is determined by the CCC to have knowingly adopted, or participated in, any scheme or device which tends to defeat, or has the effect of defeating, the implementation of, or purposes of, the provisions of this subpart, or the program provided for in this subpart, or who makes any fraudulent representation or misrepresents any fact affecting a determination under this subpart, shall be considered to have knowingly violated the provisions of this subpart and shall be liable

for the civil penalty provided for in this subpart. In such event, in addition to any penalties which are due, all amounts which would have been due to the CCC for the reductions required by this subpart but which were not paid because of the prohibited activity shall be immediately payable by such person to the CCC.

(b) All or any part of the refunds due a person under this part may be withheld or required to be refunded to the CCC with interest computed in accordance with 7 CFR part 1403 if the person adopts, or participates in adopting, any scheme or device designed to evade, or which has the effect of evading, the rules and purposes of this part. Such acts shall subject the person involved to penalties at the rate provided for in this subpart, and such acts include, but are not limited to, concealing from the county committee any information having a bearing on the application of the rules of this part, submitting false information to the county committee, transferring dairy cows to another dairy operation in order to meet requirements for refunds, or creating fictitious entities. This liability shall be in addition to any other liability imposed in accordance with this subpart or any other provision of law.

### **§ 1430.358 Continuing obligations.**

The obligations of any person that arise under this subpart shall continue in effect until final payment or other disposition agreed to by the CCC even though the reductions provided for in this part may no longer be required.

### **§ 1430.359 Administrative review of charges against responsible persons.**

Any responsible person who is adversely affected by any determination of liability under the terms and conditions of this subpart that relate to the collection of the reductions required by this subpart shall be able to obtain further consideration of such determination by filing a request for reconsideration with the Director of the Dairy Division within 30 days of the date of notice of the determination. If, upon reconsideration by the Director, the responsible person is dissatisfied with the new determination, such person may

obtain a review of such determination and an informal hearing by filing an appeal with the Vice President, CCC. Such appeal must be filed within 15 days of the date of the redetermination by the Director. Such appeals to the Vice President, CCC, will, to the extent practicable, be conducted in the same manner as administrative appeals which are conducted under 7 CFR part 780. The decision on such appeal shall constitute the final agency action in the matter.

**§ 1430.360 Offsets and withholdings.**

The CCC may offset or withhold any amounts due the CCC under this subpart in accordance with the provisions of 7 CFR part 1403 or successor regulations as designated by the Department.

**§ 1430.361 Paperwork Reduction Act assigned number.**

The Office of Management and Budget has approved the reduction related information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB number 0560-0126 has been assigned. Information collection requirements related to refunds will be submitted for approval at a later date.

**§ 1430.362 Assessment Termination, Refund Provisions for 1996 Assessments, and Clarification of Certain Procedures and Delegations.**

(a) Notwithstanding any other provision of this part, no assessment shall be collected for milk marketed after April 30, 1996. Amounts collected for 1996 marketings shall be refundable as otherwise provided for in this subpart so long as, determined pursuant to this subpart, the producer's total milk marketings for calendar year 1996 were equal to or less than the producer's total marketings for calendar year 1995.

(b) For purposes of applying the provisions of this subpart:

(1)(i) No adjustment shall be made for milk marketings in a leap year, but rather comparisons between the refund and base period milk marketings shall be made on a calendar year basis.

(ii) If a producer quits marketing milk from a dairy operation during the refund period, the comparison of mar-

ketings with the preceding year shall be made by comparing the marketings of the months and days of production in the refund period with the corresponding months and days of the base period, subject, in addition, to the provisions in paragraph (a).

(2)(i) A producer under this subpart may be deemed to include the combination of all persons or entities with an interest in the production of milk on a farm or dairy operation.

(ii) The addition or removal of an individual or entity, who adds to or removes from existing dairy units any dairy cows, to or from those with an interest in a dairy operation, shall constitute the formation of a new producer and shall be deemed to end the production history on that farm or dairy operation of the previous producer.

(3) All delegations to persons or agencies contained in this subpart shall be deemed, as appropriate, to be made to the successor official or agency resulting from any reorganization made pursuant to Public Law 103-354.

[61 FR 37616, July 18, 1996]

**Subpart C—Recourse Loan Program for Commercial Processors of Dairy Products**

SOURCE: 61 FR 37616, July 18, 1996, unless otherwise noted.

**§ 1430.400 Definitions.**

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart. The terms defined in parts 1405 and 1421 of this chapter shall also be applicable.

*CCC* means the Commodity Credit Corporation, USDA.

*FSA* means the Farm Service Agency, USDA.

*Processor* means a person or legal entity that commercially processes milk into Cheddar cheese, butter, or nonfat dry milk.

*Recourse loan* means a loan that requires repayment in full on or before the maturity date and forfeiture does not necessarily satisfy the loan indebtedness.

*USDA* means the United States Department of Agriculture.

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### **§ 1430.401 Applicability.**

(a) The regulations in this subpart are applicable to eligible dairy products produced after December 31, 1999. These regulations set forth the terms and conditions under which CCC will make recourse loans to eligible processors. Additional terms and conditions shall be those set forth in the loan application and the note and security agreement which a processor must execute in order to receive such a loan.

(b) Loan rates for the eligible dairy products shall be made available in FSA State and county offices.

(c) Recourse loans shall be available as provided in this part for eligible Cheddar cheese, butter, and nonfat dry milk.

### **§ 1430.402 Administration.**

(a) The loan program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), and shall be carried out in the field by FSA State and county committees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of this subpart.

(c) The State committee shall take any action these regulations require which the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, a county committee action which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), from determining any question arising under the program or from revising or modifying any State or county committee determination.

(e) The Deputy Administrator, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not ad-

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versely affect recourse loan program operation.

(f) A CCC representative may execute loans and related documents only under the terms and conditions CCC determines and announces. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the CCC authorized date, is null and void.

### **§ 1430.403 Loan rates.**

(a) The Secretary will announce before January 1, 2000, and thereafter, before October 1 of each year, that a recourse loan program is available under this subpart, and loan rates for Cheddar cheese, butter, and nonfat dry milk based on a milk equivalent value of \$9.90 per hundredweight of milk containing 3.67 percent butterfat.

(b) Such loan rates will be announced by USDA news release.

### **§ 1430.404 Quantity eligible for loan.**

(a) Any processor is eligible for a recourse loan on eligible dairy products owned by such processor.

(b) The total quantity of eligible dairy product which a processor may pledge as collateral for a loan at any single time may not exceed:

(1) The quantity of eligible dairy products processed during the fiscal year in which application is being made; plus

(2) The quantity of eligible dairy products processed during and under loan on September 30 of the prior fiscal year, if such products are immediately repledged as collateral for a supplemental loan on October 1 of the current fiscal year.

(c) All eligible dairy products pledged as collateral for a loan are required to be stored identity-preserved in eligible storage facilities.

(d) The processor shall furnish CCC such certification as CCC considers necessary to verify compliance with quantitative limitations.

### **§ 1430.405 Quality eligibility requirements.**

(a) For dairy products to be eligible to be pledged as collateral for a recourse loan, the processor must furnish

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CCC such certification as CCC considers necessary to verify the following minimum quality requirements:

(1) Cheddar cheese shall be:

(i) U.S. Grade A or higher and moisture shall not exceed 38.5 percent for block cheese; or

(ii) U.S. Extra Grade and moisture shall not exceed 36.5 percent for barrel cheese.

(2) Nonfat dry milk shall be U.S. Extra Grade and moisture shall not exceed 3.5 percent; and

(3) Butter shall be U.S. Grade A or higher.

(b) Any eligible dairy product pledged as collateral must be free of any contamination by either natural or manmade substances and must not contain chemicals or other substances which are poisonous or harmful to humans or animals.

(c) CCC shall, at any time, have the right to inspect collateral in the storage facilities in which it is stored.

### § 1430.406 Storage facility requirements.

Eligible dairy products will be stored under the terms and conditions CCC prescribes.

### § 1430.407 Availability, disbursement, and maturity of loans.

(a)(1) To obtain an initial recourse loan on eligible dairy products, a dairy processor:

(i) Must file a request for an initial recourse loan, as CCC prescribes, with the State committee of the State where such processor is headquartered or a State committee designated county committee;

(ii) Must execute a note and security agreement and a storage agreement as CCC prescribes; and

(iii) Shall be responsible for all costs incurred in moving eligible dairy products to an eligible storage facility.

(2) A request for an initial loan must be filed no later than September 30 of the fiscal year in which the product was produced, but no earlier than January 1, 2000.

(3) If there are any liens or encumbrances on eligible dairy products pledged as collateral for a recourse loan, waivers that fully protect CCC's interest must be obtained even though

the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the eligible dairy product after the loan is approved.

(4) A processor shall pay CCC a loan service fee in connection with the disbursement of each loan. The amount of the service fee shall be determined and announced by the Executive Vice President, CCC.

(b) No loan proceeds may be disbursed for dairy products until they have actually been produced and are established as being eligible to be pledged as loan collateral.

(c) Loans will mature no later than September 30 following disbursement of the loan.

(1) Loan maturity dates may be accelerated by CCC in accordance with § 1430.428 (d) of this subpart.

(2) CCC may offer supplemental loans at the maturity of initial loans.

(d)(1) A processor may, if supplemental loans are offered, before the maturity date of an initial loan, request a supplemental loan by:

(i) Repaying the initial loan principal plus interest on September 30;

(ii) Repledging as collateral for a supplemental loan, on October 1, eligible dairy products identified as collateral for an initial loan maturing on September 30 of the immediately preceding fiscal year; and

(iii) Executing a note and security agreement and a storage agreement as CCC prescribes.

(2) Such supplemental loan:

(i) Shall be requested by the processor no later than September 30 of the fiscal year in which the initial loan is maturing.

(ii) Shall be at the loan rate and interest rate applicable to the month in which the supplemental loan is disbursed.

(iii) Shall mature as CCC specifies, but not later than September 30 following disbursement of the supplemental loan.

(iv) May only be authorized for 1 fiscal year.

(e) The county office shall file or record, as required by State law, all security agreements which are issued with respect to eligible dairy products pledged as collateral for loan. The cost

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of filing and recording shall be paid for by CCC.

### § 1430.408 Loan maintenance and liquidation.

(a) The processor shall:

(1) Abide by the terms and conditions of the loan application and the note and security agreement;

(2) Pay interest on the principal at a rate determined under part 1403 of this chapter;

(3) Be responsible for storage costs through loan maturity;

(4) Be responsible for any loss in quantity or quality of the loan collateral, and

(5) Be responsible for maintaining the quality and quantity of the loan collateral.

(b) The processor must pay CCC the principal and interest due and redeem their collateral no later than the loan maturity date.

(c) A processor may, at any time before maturity of the loan, redeem all or any part of the loan collateral by paying CCC the loan principal and interest applicable to the quantity of dairy product redeemed.

(d) CCC may at any time accelerate the date of repayment of the loan indebtedness, including interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

(e) Prior to loan maturity:

(1) The processor may request and obtain prior written approval of the loan making office to remove a specified quantity of the loan collateral from storage for the purpose of delivering it to a buyer before repayment of the loan by executing a Marketing Authorization for Loan Collateral (Form CCC-681-1).

(2) The loan making office will approve such a request when the buyer of eligible dairy products agrees to pay CCC an amount necessary to satisfy the processor's loan indebtedness regarding the dairy products the buyer purchased. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the dairy product, or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

(f) If a processor's loan indebtedness is not satisfied in accordance with the provisions of this section:

(1) Late payment charges in addition to interest on the processor's indebtedness shall accrue at the rate specified in part 1403 of this chapter and shall accrue until the debt is paid;

(2) CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale; and

(3) The processor shall be liable for the deficiency if the net proceeds are less than the amount of principal, interest, and any other charges incurred by the CCC.

(g) If CCC determines that the actual eligible quantity serving as collateral for a recourse loan is less than the loan quantity because of incorrect certification, unauthorized removal, or unauthorized disposition, CCC may call all loans of the processor. Such determination shall result in the processor being deemed ineligible for loans for at least the remainder of the fiscal year.

(h) The security interests obtained by the CCC as a result of the execution of a security agreement by an eligible processor shall be superior to all statutory and common law liens on the collateral.

### § 1430.409 Miscellaneous provisions.

(a) CCC will not require the processor to insure the eligible dairy product pledged as collateral. However, if the processor insures such eligible dairy product and an indemnity is paid thereon, such indemnity shall accrue to the benefit of CCC to the extent of CCC's interest in the eligible dairy product involved in the loss.

(b) The regulations the Secretary issues governing offsets and withholding set forth at part 3 of this title and part 1403 of this chapter are applicable to the program set forth in this subpart.

(c) A processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations of part 780 of this title.

(d) CCC, as well as any other U.S. Government agency, shall have the right of access to the premises of the processor in order to inspect, examine,

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and make copies of the books, records, accounts, and other written data as the examining agency deems necessary to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the processor for not less than 3 years from the loan disbursement date.

(e) Any false certification made for the purpose of enabling a processor to obtain or retain a recourse loan to which it is not entitled will subject the person making such certification to liability under applicable federal civil and criminal statutes.

### § 1430.410 Applicable forms.

The CCC forms used in connection with the dairy recourse loan program will be available from the appropriate State committee or designated county committee. For any CCC form that refers to program participation by producers, the term “producer” shall be deemed to mean “processor” and the term “crop year” shall be deemed to mean “fiscal year”.

## Subpart D—Dairy Market Loss Assistance Program

AUTHORITY: Pub. L. 105-227, 112 Stat. 2681.

SOURCE: 64 FR 24934, May 10, 1999, unless otherwise noted.

### § 1430.500 Applicability.

This subpart establishes the Dairy Market Loss Assistance Program. The purpose of this program is to provide benefits to dairy operations under Pub. L. 105-277, 112 Stat. 2681, in order to provide financial assistance to dairy operations in connection with normal milk production that is sold on the commercial market.

### § 1430.501 Administration.

(a) The provisions of §§ 1430.351, 1430.352, 1430.354, 1430.355, and 1430.360 shall be applied to this subpart in the same manner as they are applied to the subpart in which they are located.

(b) The provisions of §§ 1430.1 through 1430.349, 1430.353, 1430.356 through 1430.359, 1430.361 through 1430.362, and 1430.400 through 1430.410 are not applicable to this subpart.

(c) This subpart shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Executive Vice President, CCC or designee. The program shall be carried out in the field by State and county FSA committees under the general direction and supervision of the State and county FSA committees.

(d) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this subpart.

(e) The State committee shall take any action required by this subpart which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(f) No delegation in this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(g) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

### § 1430.502 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Dairy Market Loss Assistance Program established by this subpart.

*Application* means the Dairy Market Loss Assistance Program Payment application, CCC-1040.

*Application period* means April 12, 1999 through May 21, 1999.

*Base period* means the calendar year, either 1997 or 1998, as selected by the



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dairy operation, during which milk was produced and marketed.

*Commodity Credit Corporation* means the Commodity Credit Corporation.

*Dairy operation* means any person or group of persons who as a single unit as determined by CCC, produce and market milk commercially produced from cows and whose production and facilities are located in the United States.

*Department* means the United States Department of Agriculture.

*Deputy Administrator* means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency (FSA) or a designee.

*Eligible production* means milk that had been produced by cows in the United States and marketed commercially in the United States anytime during the 1997 and or 1998 calendar year, subject to a maximum of 26,000 cwt per dairy operation.

*Farm Service Agency or FSA* means the Farm Service Agency of the Department.

*Fourth quarter of 1998* means the period from October 1, 1998 through December 31, 1998.

*Marketed commercially* means sold to the market to which the dairy operation normally delivers whole milk and receives a monetary amount.

*Milk handler* means the marketing agency to or through which the producer commercially markets whole milk.

*Milk marketing* means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

*Person* means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

*Secretary* means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

*United States* means the 50 States of the United States of America, the Dis-

trict of Columbia, and the Commonwealth of Puerto Rico.

**§ 1430.503 Time and method for application.**

(a) Dairy operations may obtain an application, Form CCC-1040 (Dairy Market Loss Assistance Program Payment Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the CCC-1040 at <http://www.fsa.usda.gov/dafp/psd/>.

(b) A request for benefits under this subpart must be submitted on a completed Form CCC-1040. The Form CCC-1040 should be submitted to the county FSA office serving the county where the dairy operation is located but, in any case, must be received by the county FSA office by the close of business on May 21, 1999. Applications not received by the close of business on May 21, 1999, will be disapproved as not having been timely filed and the dairy operation will not be eligible for benefits under this program.

(c) All persons who share in the milk production of a dairy operation that marketed milk during the fourth quarter of 1998 must certify on the same CCC-1040 in order to obtain the total milk production of the dairy operation before the application is complete.

(d) The dairy operation requesting benefits under this subpart must certify with respect to the accuracy and truthfulness of the information provided in their application for benefits. All information provided is subject to verification and spot checks by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

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### § 1430.504 Eligibility.

(a) To be eligible to receive cash payments under this subpart, a dairy operation must:

(1) Have produced and marketed milk commercially in the United States anytime during the fourth quarter of 1998;

(2) Indicate all milk commercially marketed by all persons in the dairy operation during calendar year 1997 and 1998 to establish the base period for determining the total pounds of milk that will be converted to hundred-weight (cwt) used for payment; and

(3) Apply for payments during the application period.

(b) A dairy operation must submit a timely application and comply with all other terms and conditions of this subpart and those that are otherwise contained in the application to be eligible for benefits under this subpart.

### § 1439.505 Proof of production.

(a) Dairy operations selected for spotchecks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the dairy operation was commercially marketing milk anytime during the fourth quarter of 1998. The dairy operation must also provide proof of production for the 1997 or 1998 calendar year to verify the base period. The documentary evidence of milk production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The pounds of 1997 or 1998 calendar year milk production must be documented using actual records.

(b) All persons involved in such dairy operation marketing milk during the fourth quarter of 1998 shall provide any available supporting documents to assist the county FSA office in verifying that the dairy operation produced and marketed milk commercially during the fourth quarter of 1998 and the base period milk marketings indicated on Form CCC-1040. Examples of supporting documentation include, but are not limited to: tank records, milk handler records, milk marketing payment stubs, daily milk marketings, copies of any payments received as compensation from other sources, or any other documents available to confirm the

production and production history of the dairy operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, dairy operations will be determined ineligible for benefits.

### § 1430.506 Payment rate and dairy operation payment.

(a) Payments under this subpart may be made to dairy operations only on the first 26,000 cwt of milk produced by them from cows in the United States actually marketed in the United States during the base period. A payment rate will be determined after the conclusion of the application period, and shall be calculated by:

(1) Converting whole pounds of milk to cwt;

(2) Totaling the eligible cwt (not to exceed 26,000 cwt) of milk marketed commercially during the base period from all approved applications; and

(3) Dividing the amount available for Dairy Market Loss Assistance Program by the total eligible cwt submitted and approved for payment.

(b) Each dairy operation payment will be calculated by multiplying the payment rate determined in paragraph (a) (3) of this section by the dairy operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

### § 1430.507 Misrepresentation and scheme or device.

(a) A dairy operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a dairy operation engaged

## § 1430.508

in a misrepresentation, scheme, or device, or to any other person as a result of the dairy operation's actions, shall be refunded with interest together with such other sums as may become due. Any dairy operation or person engaged in acts prohibited by this section and any dairy operation or person receiving payment under this subpart shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

### § 1430.508 Maintaining records.

Dairy operations making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified in this subpart and the pounds of milk marketed commercially during the fourth quarter of 1998 and the base period. Such records and accounts must be retained for at least three years after the date of the cash payment to dairy operations under this program.

### § 1430.509 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this subpart, and if any refund of a payment to CCC shall otherwise become due in connection with the application, or this subpart, all payments made under this subpart to any dairy operation shall be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons listed on a dairy operation's application shall be jointly and severally liable for any refund, including related charges, which is determined to be due for any reason under the terms and conditions of the application or this subpart.

(c) Interest shall be applicable to refunds required of the dairy operation if CCC determines that payments or other assistance were provided to the producer was not eligible for such as-

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sistance. Such interest shall be charged at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such benefits available. Such interest shall accrue from the date such benefits were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the dairy operation.

(d) Interest determined in accordance with paragraph (c) of this section may be waived by CCC with respect to refunds required of the dairy operation because of unintentional misaction on the part of the dairy operation, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in 7 CFR part 1403.

(f) Dairy operations must refund to CCC any excess payments made by CCC with respect to such application.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

## PART 1434—RECOURSE LOAN REGULATIONS FOR HONEY

### Sec.

- 1434.1 Applicability.
- 1434.2 Administration.
- 1434.3 Definitions.
- 1434.4 Eligibility.
- 1434.5 Containers and drums.
- 1434.6 Application, availability, disbursement, and maturity.
- 1434.7 Eligible storage.
- 1434.8 Liens.
- 1434.9 Fees and interest.
- 1434.10 Determination of quantity.
- 1434.11 Transfer of producer's interest prohibited.
- 1434.12 Loss or damage.
- 1434.13 Personal liability of the producer.
- 1434.14 Release of the honey pledged as collateral for a loan.
- 1434.15 Liquidation of loans.
- 1434.16 Foreclosure.
- 1434.17 Handling payments and collections not exceeding \$9.99.
- 1434.18 Death, incompetency, or disappearance; appeals; other loan provisions.